EDGAR W. WHITE

IBLA 85-95 Decided February 25, 1985

Appeal from the decision of the Colorado State Office, Bureau of Land Management, rejecting future interest oil and gas lease offer C-39231 Acq.

Affirmed.

1. Oil and Gas Leases: Future and Fractional Interest Leases -- Oil and Gas Leases: Known Geologic Structure

   An application for a noncompetitive future interest oil and gas lease is properly rejected where the land applied for is known to contain mineral deposits or is within the known geologic structure of a producing oil or gas field.

2. Administrative Procedure: Administrative Review -- Appeals -- Board of Land Appeals -- Rules of Practice: Appeals: Generally

   As an appellate tribunal, the Board of Land Appeals may not make initial adjudicatory decisions on matters which should properly be submitted to and decided by BLM, nor does the Board render advisory opinions.

APPEARANCES: Edgar W. White, Esq., Elkhart, Kansas, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On June 4, 1984, Edgar W. White filed a noncompetitive oil and gas lease offer covering the NE 1/4 sec. 9, T. 35 S., R. 43 W., 6th Principal Meridian, Morton County, Kansas, for the reserved mineral interest which will vest in the United States on June 15, 1985.

The land was purchased by the United States, which received a deed excepting and reserving to the grantor all minerals, including oil and gas, for a period of 50 years from June 14, 1935.

On August 7, 1984, the Colorado State Office of the Bureau of Land Management (BLM) rejected White's offer for the stated reason that the "land

is located within the Hugoton Field Known Geological Structure [KGS] and is available through competitive leasing pursuant to 43 CFR 3120.8." BLM further advised White that it would treat his offer as a request that the lease be put up for competitive sale, and that he would be notified of such sale.

In appealing from that decision, White states:

> First of all, though a technicality and it may not make that much difference, I would like to point out that this particular area is not in the Hugoton Field geological structure. The Hugoton Field structure, as it is commonly known, extends to a point several miles east of this location. The Hugoton Field, or the gas zones producing within the Hugoton Field, covers approximately the east 1/3rd to the east 1/2 of Morton County, Kansas. The quarter section that I am interested in is in the western part of Morton County.
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> I have held an interest in this oil and gas lease for several years, and took the lease from the present mineral owners. Soon thereafter, I unitized this quarter section with other land, and have had a producing gas well on one of the unitized quarters since March 28, 1958. The gas well is not located on the NE 1/4 Sec. 9, but I have had an investment in the gas well with which the NE 1/4 Sec. 9 is unitized. It will be a direct economic loss to me if I am unable to extend the lease.
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> * * * * * * *
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> From the information you sent me, it appears that perhaps this lease should be considered under "Title 43 - Public Lands - Section 3120.8-3." The United States does not hold a present interest in the minerals, but will come into the ownership on June 14, 1985.

[1] The BLM land status plat shows the entire township included in the Hugoton Field KGS. Although appellant contends that it is wrongly designated as the Hugoton Field structure, he is correct in his observation that this is a technicality which does not make much difference, as the land in question is admittedly part of a unitized producing oil and gas field. Regardless of the name of the field, it is obviously on some known geologic structure. Moreover, under 43 CFR 3111.3-1(a), lands which are merely "known to contain mineral deposits" are not available for noncompetitive leasing of future oil or gas interests. Therefore, the Board need not resolve the question of whether this land is in the Hugoton Field or some other field.

The statute which authorizes the Secretary to lease future mineral interests in the acquired lands of the United States provides that this may be done "under the same conditions as contained in the leasing provisions of the mineral leasing laws * * *." 30 U.S.C. §§ 352, 354 (1982). The provision of the mineral leasing laws which controls the Federal leasing of oil and gas deposits

is found at 30 U.S.C. § 226(b) (1982), which provides, in essence, that if the lands to be leased are within any KGS, they shall be leased to the highest qualified bidder by competitive bidding.

This Department has long held that applications for noncompetitive future interest oil and gas leases must be rejected where the lands applied for are within a KGS, such lands being subject only to competitive leasing. Frank J. Asam, A-29337 (May 24, 1972); Stanolind Oil and Gas Co., A-27326 (July 12, 1956).

Had the United States accepted a deed to this land wherein the grantor had expressly reserved the minerals for 50 years "and so long thereafter as minerals are produced in paying quantities," or words to that effect, this Board would be faced with the more difficult question of whether the unitization of this land with another producing property would operate to preserve the existing private lease beyond June 15, 1985. Unfortunately for appellant, our scrutiny of the deed discovers no language which might be so construed. It provides quite plainly and unconditionally that the reservation will endure only "for a period of 50 years from June 14, 1935."

We conclude therefore that the reserved mineral interest will vest in the United States on June 15, 1985, and that no lawful authority exists by which appellant's noncompetitive offer can be accepted.

[2] Appellant adverts to 43 CFR 3120.8-3, suggesting that regulation may apply. However, as this appeal concerns only the propriety of BLM's rejection of appellant's noncompetitive offer, and the regulation cited concerns compensatory royalty agreements in lieu of leasing, this Board may not address the applicability of that regulation in the context of this case. As an appellate tribunal, the Board may not make initial decisions or render advisory opinions. If appellant believes that an agreement such as described in the regulation is applicable in his circumstance, he should so propose to BLM.

Finally, we note, parenthetically, that appellant's offer was non-conforming in at least two other respects. First, it was filed more than a year prior to the vesting of the interest in the United States, whereas 43 CFR 3111.3-1(b) provides that such offers "may be filed less than one year prior to the date of vesting in the United States of the present interest in the minerals." 1/ Second, a copy of the lease under which he claims the present interest in the oil and gas did not accompany his future interest lease offer, as required by 43 CFR 3111.3-2. However, in view of our holding based on the mineral status of the land, we need not decide whether these discrepancies were disqualifying.

1/ The use of the permissive "may," in the regulation, rather than "must" or "shall," creates an ambiguity, particularly when read with the knowledge that a previous regulation, 43 CFR 3130.4-5 (1979), required rejection of any such application filed less than one year prior to the date of vesting of the minerals in the United States.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Franklin D. Arness
Administrative Judge